CF0000062253

IN THE HIGH COURT OF JUDICATURE, MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 821 OF 1999.

(UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE).

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Filed on 22/2/99
by Shri P. K. Shriwastava Advocate

Rlt. A. R.

APPELLANT (IN JAIL) : Suman Kumar, Son of Shri Ramdayal Patel, Aged about 29 years, Resident of Jabera Police Station Jabera, District-DURG (Madhya Pradesh).

VERSUS

RESPONDENT : State of Madhya Pradesh.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

CONVICTION SENTENCE

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON. SHRI L.C. BHADOO &
HON. SHRI DHIRENDRA MISHRA,JJ

Criminal Appeal No. 821 of 1999

Appellant **Suman Kumar**

Vs

Respondent **State of M.P.**

Shri L.C.Das, learned counsel for the appellant.

Shri U.N.S. Deo, learned G.A. with Shri M. P.S.Bhatia, learned P.L. for the State.

ORAL JUDGMENT
(22/03/2006)

Per L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 30.01.99 passed by Fourth Additional Sessions Judge, Durg in S.T.No.62/98 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Sections 302 of the Indian Penal Code sentenced him to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment of fine to further undergo RI for two years for committing the murder of his wife namely Amrika Bai.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
2.	Case of the prosecution, in brief, is that on 30.03.1997 the accused/appellant went to the police outpost Jewra and gave Dehati Nalishi P-11 to the A.S.I. Outpost incharge to the effect that as he used to doubt the fidelity of his wife therefore there was dispute between him and his wife. On the date of incident, in the morning, he along with his wife were working in the kitchen garden and during that period his wife Amrika Bai (since deceased) said that as he is not working up to the fullest capacity therefore she will not work with him and she is going to the residence, which infuriated him and he picked up the *Raapa (Kudali-Shovel)* which was lying on the ground and attacked twice and after throwing the same he has come along with one Ganga Prasad (P.W.-6) to lodge the report. The Outpost Incharge recorded the same under P-10A in the police case diary and prepared Dehati Nalishi P-11 which was sent to the police station Sirsa where FIR P-13 was registered. The Investigating Officer prepared the site plan of the place of occurrence P-12 and left for the scene of occurrence. After giving notice P-2 to the panchas prepared panchnama P-1 of the body of Amrika Bai. The body of Amrika Bai was sent for post mortem to the District Hospital, Durg under P-4A where Dr. Praveen Agrawal conducted the post mortem and prepared the post mortem report P-4. The Investigating Officer took into possession the clothes of the deceased under P-7. He also took into possession the clothes of the accused under P-8. The weapon of offence- *Raapa (Kudali-Shovel)* was taken into possession from the place of occurrence under P-9. The articles were sent for examination to the Forensic Science Laboratory, Sagar from where report P-19 was received. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Durg who in turn committed the case to the	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Sessions Judge, Durg from where the learned Fourth Additional Sessions Judge received the case of transfer for trial.	
3.	The prosecution in order to establish the charge against the accused/appellant examined as many as eight witnesses. On the other hand statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which he pleaded innocence about most of the facts but in the last, he has stated that he went to the police chowki along with one Ganga Prasad and said that he attacked his wife with a Spade as his wife was having physical relations with one Dhanesh and on account of that there used to be dispute between them. He further stated that he saw his wife with Dhanesh and he was also able to see the love letters exchanged between the two. He assaulted his wife in the fit of anger.	
4.	Learned Additional Sessions Judge after conclusion of the trial and hearing the counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph one of the judgment.	
5.	We have heard Shri L.C.Das, learned counsel for the accused/appellant and Shri U.N.S.Deo with Shri M.P.S.Bhatia on behalf of the State.	
6.	Homicidal death of Amrika Bai is not in dispute.	
7.	As far as the involvement of the accused/appellant in the crime in question is concerned there is no direct and ocular evidence and the whole case rests on the circumstantial evidence i.e. i) that the accused made extra judicial confession before P.W.-6 Ganga Prasad and ii) that the weapon of	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	offence - *Raapa (Kudali-Shovel)* and the clothes of the accused were found stained with blood.	
8.	As far as the first circumstance is concerned, P.W.-6 Ganga Prasad has categorically stated in his evidence that on the fateful day at the crucial time he went outside the village to a place where one truck accident took place. At the that time the accused came walking towards him and said that "Babaji I had murdered my wife' on which he enquired that with which weapon he has murdered his wife upon which he said that he has murdered her by assaulting with *Raapa (Kudali-Shovel)* which is called spade. On further enquiry by him he said that he attacked with the *Raapa* on her head and thereafter he along with the accused went to the police chowki Jewra where he again disclosed the same facts.	
9.	In the cross examination of this witness the defence has not been able to elicit any circumstance which makes the evidence of this witness untrustworthy or unreliable.	
10.	Moreover he is an independent witness and nothing has been brought on record which shows that he has deposed against the accused on account of animosity of bias. Therefore the evidence of this witness regarding making extra judicial confession before the accused inspires the evidence of the Court.	
11.	As far as the second circumstance is concerned, the clothes of the accused were taken into possession under P-8 and the weapon of offence *Raapa (Kudali-Shovel)* was taken into possession under P-9 and the	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

same has been proved by P.W.-5 M. L.Shukla, P.W.-6 Ganga Prasad and P.W.-8 Tulsi Ram. As per the Forensic Science Laboratory report, the clothes of the accused and *Raapa (Kudali-Shovel)* were found stained with blood. Therefore the prosecution has been able to establish based on the circumstantial evidence, the involvement of the accused in the crime in question attacking the deceased by the accused with *Raapa (Kudali-Shovel)*.

12. Learned counsel for the accused/appellant argued that when the accused and the deceased were working in the kitchen garden, the deceased refused to work with him and as the accused was already annoyed with the deceased regarding her relations with one Dhanesh, the refusal to work by the deceased infuriated the accused and in a sudden quarrel, in a heat of passion without any premeditation the accused picked up the *Raapa* lying on the ground and assaulted with the same from the back side. Therefore the offence against the accused does not travel beyong 304-II of the IPC.

13. On the other hand Shri M.P.S.Bhatia, P.L. on behalf of the State supported the judgment of the trial Court.

14. The argument which has been advanced by the counsel for the accused/appellant to a great extent find place in the report disclosed by the appellant himself in the police Outpost, Jewra in which he had mentioned that as he was doubting that his wife was having physical relationship with some other person therefore there used to be frequent dispute between them and on the fateful day when both of them were

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —C—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

working in the kitchen garden deceased all of a sudden refused to work with him saying that he was not working up to the fullest capacity and said that she is going to his house which infuriated him and picked up the *Raapa* which was lying on the ground and attacked her.

15. Similar is the defence taken by the accused in a statement under Section 313 of the Cr.P.C. and as has been mentioned that the case rests on the extra judicial confession made by the accused/appellant before P.W.-6 Ganga Prasad who has also stated that accused came to him and informed that on enquiry by him as to why he committed the crime and thereafter they went to the police chowki where he said that a quarrel ensued between the two while they were working in the kitchen garden and there was nothing on record to indicate that the accused had any pre-plan or pre-meditation to attack the deceased and the body of the deceased was also found in the kitchen garden itself where the offence took place and from the facts it appears that they were working together in the kitchen garden, a dispute arose between the two and in that process accused assaulted his wife (since deceased) with the *Raapa.*

16. Therefore we are of the considered opinion that the case of the accused is covered under Exception 4 of Section 300 of the IPC and there is nothing on record to show that the accused acted in a cruel and unusual manner. The conduct of the accused was such that immediately after attacking his wife he went to the police Outpost and reported the matter therefore, looking to the manner in which the accused attacked his wife and also looking to the facts of the case we are of the opinion that the offence under Section 304-I of the IPC is made out against the accused and as

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	such the finding of the trial Court convicting the accused under SecPtion 302 of the IPC and sentencing him under that Section could not be sustained.	
17.	In the result, the appeal partly succeeds. The accused is acquitted of the charge under Section 302 of the IPC and the sentenced imposed upon him is also set aside. Instead thereof the accused/appellant is convicted under Section 304-I of the IPC and sentenced to undergo RI for ten years. The accused/appellant shall be entitled to setoff of the detention period for which he remained in the police and judicial custody.	
	Sd/- L.C. BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

19.4.05